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Cuban Spy Flights and the Law

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Our Might Is Right, Some Say

BY JOHN McMULLAN

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WASHINGTON — If Cuba shoots down a U-2 spy plane and the United States retaliates, who's right?

Should that happen, the question of morality could very well be blown up along with a piece of the world in the resulting chain reaction. The question would interest only future historians.

But President Johnson's warning to Fidel Castro not to interfere with the United States aerial surveillance of Cuba is feeding an argument among experts in international law.

As in most other legal matters, the experts disagree.

"Fortunately, there are several principles in international law," says Prof. William Mallison of George Washington Law School. "And the right of self-defense is of overriding importance.

"The UN charter recognizes that as an existing right. If we were brought before the United Nations, we could make an overwhelming case."

Part of the U.S. case would be that it was not acting unilaterally but for the Organization of American States, al-

though the OAS as a regional body is inferior to the UN.

How High Up Is Sovereignty?

Many prominent legal scholars, however, see the U.S. position as considerably less justifiable.

The questions of how high up a nation's territory and sovereignty extend and of what a spied-upon nation can do in retaliation have been plaguing analysts since the first U-2 was shot down over Russia in 1960.

Since then, the U.S. Samos-Midas spy satellites, which can look in on a nation from the safety of space, have intensified the discussion. Another Samos was launched this week on a polar orbit, which will take it over Russia regularly.

THIS opposing school of scholars is typified by Quincy Wright, a retired University of Virginia law professor.

Discussing the U-2 case in 1960, Wright contended in the American Journal of International Law:

• Penetration of a nation's airspace by unauthorized aircraft has been especially forbidden since World War I.

• International law does not presently recognize any upper limit to a nation's airspace. (After launching the first Sputnik, however, some Russians indicated belief that some limits ought to be set.)

• Although a nation can defend itself against armed attack, international law has sought to limit a nation's discretion in taking defensive

measures. (The United States sought to justify its U-2 flights over Russia as self-defense because Russia is a "closed society" and engages in espionage on an even larger scale than the United States.)

• Nations habitually have taken measures to bring down planes that refuse to land. "The only legal issue," Wright said, "is the extent of warning which would be given before a plane is shot down."

ANY LEGAL solution, however, bogs down over the point of self-defense.

The United States contends that it needs to conduct aerial surveillance in order to protect itself against surprise attack, while Russia and Cuba say they need to shoot down U-2s in order to protect themselves.



American U-2 reconnaissance planes over Cuba are again in the news spotlight

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